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DISTRICT COURT OF GUAM

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9ZP372W

IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

INCHCAPE SHIPPING SERVICES GUAM,
LLC,

Plaintiff in Intervention,

vs.

MARWAN SHIPPING & TRADING CO.,
FIVE SEAS SHIPPING CO., LLC, and S.J.
GARGRAVE SYNDICATE 2724, *in*
personam,

Defendants.

AND CROSS-CLAIMS, COUNTERCLAIM,
AND CLAIM IN INTERVENTION

Case No.: 1:06-CV-00011

**FIRST AMENDED THIRD-PARTY
COMPLAINT OF S.J. GARGRAVE
SYNDICATE 2724 AGAINST
NAVIGATORS PROTECTION &
INDEMNITY**

IN ADMIRALTY

Complaint Date: April 19, 2006

Trial Date: May 12, 2008

1 S.J. GARGRAVE SYNDICATE 2724,

2 Third-Party Plaintiff,

3 vs.

4 NAVIGATORS PROTECTION &
5 INDEMNITY,

6 Third-Party Defendant.
7

8 S.J. GARGRAVE SYNDICATE 2724 (hereinafter "Gargrave"), an unincorporated
9 association, for a First Amended Third-Party Complaint against NAVIGATORS
10 PROTECTION & INDEMNITY, a corporation (hereinafter "Navigators"), alleges as follows:

11 **JURISDICTION**

12 1. This is a case of Admiralty and Maritime jurisdiction, as hereinafter more fully
13 appears; it is an Admiralty and Maritime claim within the meanings of Rules 9(h) and 14(c) of the
14 Federal Rules of Civil Procedure. This Court has jurisdiction pursuant to 28 U.S.C. § 1333(1).
15 This Court also has ancillary and/or pendent jurisdiction over the matters set forth herein.

16 **VENUE**

17 2. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(b), in
18 that a substantial part of the events or omissions giving rise to the claims herein occurred in this
19 judicial district.

20 **PARTIES**

21 3. Plaintiff Gargrave is an unincorporated association organized and existing under
22 the laws of the United Kingdom, with its principal place of business at London, England. At all
23 relevant times, Gargrave was an insurer in the business of writing marine insurance and issuing
24 Certificates of Financial Responsibility (hereinafter "COFRs").

25 4. Gargrave is informed and believes that third-party defendant NAVIGATORS
26 PROTECTION & INDEMNITY (hereinafter "Navigators") was and now is an entity duly
27 organized and existing under the laws of the United Kingdom, with its principal place of business
28 at London, England, and is a subsidiary of Navigators Insurance Company of New York.

1 Navigators is an insurer in the business of underwriting marine insurance, particularly
2 protection & indemnity (hereinafter "P&I") insurance and excess P&I insurance. Gargrave is
3 informed and believes that at all relevant times, Navigators was the P&I insurer for the
4 M/V AJMAN 2.

5 5. In or about August of 2004, the M/V AJMAN 2 broke free of her mooring and ran
6 aground on Family Beach in Apra Harbor, Guam (hereinafter the "incident"). Plaintiff UNITED
7 STATES OF AMERICA (hereinafter "United States") then retained a salvage contractor to
8 provide salvage and wreck removal services to remove the vessel from the beach, re-secure it at a
9 mooring, and otherwise protect and preserve the owners' property and interest in the vessel. The
10 services provided by the salvage contractor are considered under admiralty law to be in part
11 salvage services and in part wreck removal services. Certain of the expenses are also considered
12 "sue and labor" expenses under admiralty law. The aforesaid salvage and sue and labor expenses
13 incurred by the contractor retained by the United States are insured by the hull and machinery
14 policy issued by Third-Party Defendant AL-BUHAIRA NATIONAL INSURANCE COMPANY
15 ("Al-Buhaira"), and payment for them should be made to the United States by Al-Buhaira, and
16 not by Gargrave.

17 6. The derelict hull of the M/V AJMAN 2 was removed from Family Beach in Apra
18 Harbor, Guam by a contractor of the United States. The contractor's expenses therefor are
19 considered in part to be wreck removal expenses under admiralty law. Certain of the expenses
20 are also considered sue and labor expenses. The aforesaid wreck removal and sue and labor
21 expenses are insured under the vessel's P&I policy issued by Navigators, and the claims of the
22 United States for reimbursement of said wreck removal and sue and labor expenses should be
23 paid herein by Navigators, and not by Gargrave.

24 7. At an early point during the vessel's port call at Guam, Navigators appointed a
25 marine surveyor, Paul Thomas, or allowed him to be appointed on Navigators' behalf, to
26 represent the P&I interests (including Navigators) and the vessel's owners and operators.
27 Mr. Thomas traveled to Guam from the Philippines, and on arrival announced to all of the
28

1 relevant authorities that he had taken charge of, and had taken financial responsibility for, the
2 incident, on behalf of the P&I interests and the vessel's owners.

3 8. Gargrave is informed and believes that, after the vessel severely damaged Pier F-5
4 and then ran aground, Navigators instructed Mr. Thomas to withdraw immediately and return to
5 his office in the Philippines. Mr. Thomas did return to the Philippines, without announcing his
6 departure to any of the state or federal agencies involved, to the Port, or to Gargrave.

7 9. As a direct result of Mr. Thomas, the P&I and owners' representative, having
8 disappeared from Guam, the U.S. Coast Guard had no representative of the owners and their
9 insurers with whom the Coast Guard could communicate, confer and make decisions regarding
10 the vessel. Accordingly, the Coast Guard "federalized" and took control of the vessel and the
11 incident, which directly resulted in very large costs and expenses being incurred by a wreck
12 removal and salvage contractor for the U.S. Government. These costs were far in excess of the
13 expenses which would have been incurred if Gargrave, through local contractors, had been
14 allowed to handle the incident, which Gargrave was both capable of doing and was prepared to
15 do. Navigators is responsible for these additional and unnecessary costs and expenses.

16 10. The United States has filed a Verified Complaint of the United States herein
17 (hereinafter the "Verified Complaint"), which is incorporated in this First Amended Third-Party
18 Complaint by reference, naming Gargrave as a defendant, among others, and seeking to recover
19 costs which the United States allegedly has expended in responding to a threat of and preventing
20 pollution at Apra Harbor, Guam, salvaging the vessel M/V AJMAN 2 and removing the wreck of
21 said vessel, in or about August and September of 2004. Navigators, and not Gargrave, should pay
22 all or most of the sum the United States is seeking herein.

23 FIRST CAUSE OF ACTION

24 (Equitable Indemnity Against Navigators)

25 11. Gargrave refers to and incorporates by reference as though fully set forth herein
26 each and every foregoing paragraph of this First Amended Third-Party Complaint.

27 12. Gargrave denies any liability for the allegations set forth in the Verified
28 Complaint, and instead alleges that all events and happenings referred to therein were caused and

1 created by the active negligence and/or intentional willful misconduct and failure to perform
2 duties and contractual obligations by Navigators and others. Gargrave further asserts that
3 Navigators should have responded, in the first instance, to the demands of the United States for
4 pollution response and abatement and for wreck removal, as the P&I insurer. In the event
5 Gargrave is adjudged liable to the United States under the Verified Complaint, any fault or
6 liability of Gargrave, all of which is vigorously denied, would be passive in nature and secondary,
7 as opposed to the active and primary fault and breaches of duties and of contract by Navigators,
8 as the P&I insurer.

9 13. If any judgment should be rendered in favor of the United States or others against
10 Gargrave, or if a settlement is made by Gargrave, Gargrave will be entitled to full indemnification
11 from Navigators, and Gargrave is entitled to recover in equitable indemnity for wreck removal
12 and sue and labor expenses from Navigators in the full amount of any said judgment or
13 settlement, in addition to attorneys' fees and costs.

14 **SECOND CAUSE OF ACTION**

15 (Contribution Against Navigators)

16 14. Gargrave refers to and incorporates by reference as though fully set forth herein
17 each and every foregoing paragraph of this First Amended Third-Party Complaint.

18 15. As a direct and proximate result of Navigators' breaches of contract and of its
19 respective duties to its insureds, and to others, Gargrave has suffered, or potentially may suffer,
20 various damages in an amount to be proven at the time of trial.

21 16. As a result of Gargrave's potentially having to pay amounts in excess of its proper
22 liability, if any, Gargrave is and will be entitled to legal and/or equitable contribution for wreck
23 removal and sue and labor expenses from Navigators for some or all of Gargrave's respective
24 liabilities, if any there are.

25 **THIRD CAUSE OF ACTION**

26 (Tort of Another Against Navigators)

27 17. Gargrave refers to and incorporates by reference as though fully set forth herein
28 each and every foregoing paragraph of this First Amended Third-Party Complaint.

1 18. Gargrave is informed and believes that Navigators breached its duties under its
2 policy of P& I insurance, and breached other non-contractual duties and obligations. As a direct
3 and proximate result of these breaches of duty and of contract by Navigators, Gargrave has been
4 compelled to litigate with the United States.

5 19. Gargrave has incurred substantial attorneys' fees and costs in this litigation, and
6 will continue to incur such fees and costs until the issues involved herein are resolved. Gargrave
7 is entitled to recover these fees and costs from Navigators, plus full indemnity for any liability of
8 or settlement by Gargrave herein, under the doctrine of wrongful act / tort of another.

9 **FOURTH CAUSE OF ACTION**

10 (Negligence Against Navigators)

11 20. Gargrave refers to and incorporates by reference as though fully set forth herein
12 each and every foregoing paragraph of this First Amended Third-Party Complaint.

13 21. Navigators was negligent in appointing surveyor Paul Thomas, in directing and
14 supervising his activities, and in neglecting and failing to properly direct and supervise his
15 activities on Guam. Mr. Thomas was negligent in his activities as representative of the P&I
16 interests and vessel owners during the incident at Guam. Navigators is responsible for
17 Mr. Thomas' activities, since he was Navigators' agent.

18 22. Navigators was further negligent in prematurely withdrawing Mr. Thomas from
19 Guam, without notice to anyone, thereby leaving no representative of the P&I interests and
20 owners with whom the Coast Guard could have communicated. The negligence of Navigators led
21 to the Coast Guard federalizing the incident, and directly led to the incurring of costs and
22 expenses greatly in excess of what was needed to resolve the incident, and greatly in excess of
23 what private contractors would have charged if Gargrave had been allowed to control the
24 incident, which Gargrave was both equipped and prepared to do.

25 23. Gargrave has incurred substantial attorneys' fees and costs in this litigation, and
26 will continue to incur such fees and costs until the issues involved herein are resolved. Gargrave
27 is being sued by the United States for inflated fees and costs which were incurred solely due to
28 the negligence of Navigators and its agent, Mr. Thomas. Gargrave is entitled to indemnity or

1 contribution from Navigators for Navigators' negligence, tortious conduct and breaches
2 of contract.

3 **DEMAND FOR JUDGMENT IN FAVOR OF PLAINTIFF**

4 24. Pursuant to F.R.C.P. 14(c), Gargrave hereby demands judgment against
5 Navigators, in favor of plaintiff United States and in favor of the cross-complainants against
6 Gargrave, and further demands that Navigators answer and make any defenses to the claims of
7 the United States, as set forth in the Verified Complaint, and to the cross-complaints of the cross-
8 complainants against Gargrave, directly, as well as to the claims of Gargrave.

9 **PRAYER**

10 WHEREFORE, Third-Party Plaintiff Gargrave prays for judgment as follows:

11 1. For full and complete indemnification from Navigators in the event Gargrave is
12 held liable in the principal action herein, or in the event Gargrave makes any settlement with the
13 plaintiff United States and/or any other party herein;

14 2. For contribution from Navigators in the event Gargrave is held liable in the
15 principal action herein, or in the event Gargrave makes any settlement with the plaintiff United
16 States and/or any other party herein;

17 3. For a judgment pursuant to the provisions of F.R.C.P. 14(c) directly against
18 Navigators in favor of the plaintiff United States and in favor of the cross-complaints against
19 Gargrave, and for Navigators to make its defenses and answers directly to the claims of the
20 United States and to the cross-complaints against Gargrave, as well as to the claims herein of
21 Third-Party Plaintiff Gargrave;

22 4. For judgment against Navigators for Gargrave's costs, expenses and reasonable
23 attorneys' fees incurred in defense of the United States' Verified Complaint, of the cross-
24 complaints against Gargrave, and other pleadings; and

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27 ///

5. For such other and further relief as this Court may deem just and proper.

Dated this 30th day of November, 2007.

THOMAS McKEE TARPLEY,
Attorney for Defendant, Cross-Claimant
and Counterclaimant S.J. GARGRAVE
SYNDICATE 2724

1 **CERTIFICATE OF SERVICE**

2 I, Dorothea Quichocho, hereby certify pursuant to Rule 5(d) Fed. R. Civ. P. that on
3 November 30th, 2007, I caused to be served a true and correct copy of the **FIRST**
4 **AMENDED THIRD-PARTY COMPLAINT OF S.J. GARGRAVE SYNDICATE 2724**
5 **AGAINST NAVIGATORS PROTECTION & INDEMNITY** to the following:

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9 Dated this 30th day of November, 2007.

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